REMARKS

Claims 15 and 32 have been amended to include the limitations of former claims 29 and 33 respectively. Claims 29 and 33 have been cancelled. The remainder of the claims are unchanged. The amendments to the claims have been made to expedite the allowance of the application and for no other reason. No admission or representation is made by the present amendments apart from that set forth explicitly below.

Summary of Rejections

The Examiner rejected claims 32-34 under 35 U.S.C. 102(a) as being anticipated by the newly cited Tuulos reference (PCT application Pub. No. WO 03/081932).

The Examiner has also rejected claims 15, 19, 22, 23, 26, 29, 30 and 31 under 35 U.S.C 103(a) as being obvious in regard to U.S. Patent Publication No. 2003/0074590 (Fogle) in view of Tuulos.

The Examiner has also rejected claims 20 and 21 under 35 U.S.C 103(a) as being obvious in regard to Fogle in view of Tuulos, in further view of U.S. Patent Publication No. 2005/0077997 (Landram).

The Examiner has also rejected claim 24 under 35 U.S.C 103(a) as being obvious in regard to Fogle, in view of Tuulos, in further view of Landram, and in further view of U.S. Patent Publication No. 2005/0164720 (Huang).

35 U.S.C. 102(a) / 35 U.S.C 103(a)

The Applicant respectfully submits that independent claims 15, 26, 31 and 32 (as amended) are allowable for the reasons set forth below.

The Office Action was issued following the United States Supreme Court's decision in the case of *KSR Int'l Co.* v. *Teleflex Inc.*, No. 04-1350 (April 30, 2007). The Examiner, by citing references and asserting a reason for combining elements from the references, appears to have elected to base the rejection upon a teaching, suggestion or motivation to select and combine features from the cited references. The Applicant wishes to point out that the Supreme Court's KSR decision did not reject the use of the "teaching, suggestion or motivation" analysis as part of an obviousness analysis, characterizing the analysis as "a helpful insight" (KSR slip op. at 14-15).

When the Examiner chooses to base a 103(a) rejection upon a teaching, suggestion or motivation analysis, the Examiner must satisfy the requirements of such an analysis. In particular, the Examiner must demonstrate with evidence and reasoned argument that there was a teaching, suggestion or motivation to select and combine features from the cited references.

Because of the apparent ground for rejection, and in the absence of any alternate argument put forward by the Examiner, the only pending ground for rejection appears to be a "teaching, suggestion or motivation" analysis. In the event that the Examiner chooses to consider a different rationale for rejection, this would be a new ground for rejection not due to any action by the Applicant. The Applicant has a right to be heard on any new ground for rejection.

To establish a *prima facie* case of obviousness under the "teaching, suggestion or motivation" analysis, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

In the event that the cited references fail to disclose or suggest all of the elements recited in the claims, then combining elements from the references would not yield the claimed subject matter, regardless of the extent of any teaching, suggestion or motivation.

Moreover, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As the Examiner is aware, MPEP 2142 states:

> To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

Each of the independent claims now include the limitation that, if the mobile device is determined to be in a secure location, a first countdown timer value defining a duration after which the mobile device will be locked if user interaction with the mobile device is not detected, and apply, if the mobile device is determined not to be in a secure location, a second, shorter, countdown timer value

defining the duration after which <u>the mobile device will be locked if user interaction with the mobile device is not detected</u>. (emphasis added)

In his rejection of claims 26 and 31 and former claims 29 and 33 (the subject matter of which has now been added to independent claims 15 and 32 respectively), he states that Tuulos inherently discloses the above feature. The basis for this characterization of Tuulos appears to be that, in the passage of Tuulos at page 11, lines 9-20, he discloses that in less secure areas more frequent input of security data may be required (for example, every time the phone is accessed), and that in more secure areas less frequent PIN or password input, or even no PIN or password at all, may be required. The Applicant respectfully submits that the teaching of Tuulos in the recited passage is not the same as the claimed countdown timers.

For convenience, the Applicant reproduces page 11, lines 9-20, of Tuulos below:

> The MS 23 is also capable of operating in at least first and second security modes, the first security mode requiring higher security access than the second. The first security mode can, for example, require a longer password or PIN to be entered to access the MS 23 than the second security mode. In other embodiments, the first security mode can require a more frequent input of security data than the second mode. For example, in the first security mode, it might be necessary to input a PIN or password each time the phone is to be accessed, whilst the second security mode requires less frequent PIN or password access, or even no PIN or password input at all.

The claimed countdown timer locks the mobile device if user interaction with the mobile device is not detected within a predetermined duration. The passage in Tuulos cited above, while it does describe more frequent input of security data when in the less secure area (mode), does not say that this occurs in combination

with requiring a different password (a longer password in Tuulos) in the less secure area. When the passage is read as a whole, it suggests that the use of an increased frequency of the password entry in a secure area is an alternative to using a different (longer) password. In order words, Tuulos suggests that either a different password must be entered <u>or</u> more frequent password entry is required in less secure areas, not both as required by amended claims 15 and 32. The last sentence of the cited passage further supports this interpretation in that, in secure areas, Tuulos states that no password or PIN may be required. Respectfully, it is only with highlight based on the Applicant's own disclosure, which is improper, that the Examiner's characterization and interpretation of Tuulos can be found.

Moreover, the cited passage of Tuulos does not describe a countdown timer which locks the mobile device <u>if user interaction with the mobile device is not detected within a predetermined duration</u>. Tuulos only says that more frequent password or PIN entry may be required. The requirement for password and PIN entry may be triggered by many different kinds of events such as, for example, a powering-on the device, loss of contact with the cellular network, at the occurrence of predetermined intervals (which is different than the claimed lockout timer). The claimed countdown timer is a specific trigger condition for locking the mobile device, and thereafter requiring password entry to unlock the device. There is nothing in Tuulos to suggest the use of a countdown timer for locking a device if user interaction with the mobile device is not detected within a predetermined duration as in the claimed invention. Tuulos states, in the cited passage, only that the PIN or password may be required each time the phone is to be accessed in the less secure areas. This could mean many different things, for example, it could mean that in less secure areas the PIN or password is required before placing a call. Regardless, Tuulos does not explicitly describe the use of a countdown timer in the manner claimed. Respectfully, again it is only with highlight based on the Applicant's own disclosure, which is improper, that the countdown timer can be found in Tuulos.

Thus, independent claim 32, as amended, is not anticipated nor obvious in view of Tuulos.

The second reference relied upon by the Examiner in his rejection under 35 U.S.C. 103(a) is Fogle. Fogle discloses a computer which will enter a power-saving standby mode if a first predetermined time duration (T_A) goes by without user activity, and after entering standby mode, will subsequently enter a lock workstation mode in the event that a second predetermined time duration (T_B) passes without detection of a user input. Fogle does not describe nor suggest determining location information based on input signals received from the first input device, and changing the determined password required to remove the restrictions on user access in dependence on the determined location information. This was previously acknowledged by the Examiner.

While Fogle describes a countdown timer which locks a desktop computer if user interaction with the mobile device is not detected within a predetermined duration, it uses two timers to arrive at a locked state. This is because the primary concern of Fogle is the power savings in the standby mode which is provided by its solution. Only after the computer enters the standby state does the second timer for locking the computer commence. The solution of Fogle would seriously undermine the data security of a mobile device by requiring two timers to lock device. Unlike Tuulos and the claimed invention, Fogle is less concerned with security because it is directed to desktop computers rather than mobile devices. Desktop computers, unlike mobile devices, do not have the same concerns over data security because computers are not faced with the serious risks of data security resulting from the portability of mobile devices. There is nothing in Fogle or Tuulos which would lead the skilled person to modify the teachings of Fogle to use a single countdown timer as in the claimed invention, and the Examiner has not provided any reason as to why the skilled person would do so.

Moreover, as the Examiner is aware and as stated in MPEP 2143.1, a proposed modification cannot render the prior art unsatisfactory for its intended purpose:

> If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

Modifying the solution of Fogle from using two timers, a first to enter a power saving standby mode and a second to enter a locked mode, to use a single countdown timer which goes directly to a locked state after a predetermined period of time, as in the claimed invention, would render Fogle completely useless for its intended purpose of providing a powering saving mode. Therefore, a skilled person in the art would not be motivated to combine and/or modify Fogle in view of Tuulos, and in fact may be lead away from doing so.

Moreover, Fogle, like Tuulos, does not describe the use of a shorter counter timer when in an insecure location then when in a secure location as in the claimed invention. Again, there is also no teaching or suggestion in the prior art to modify Fogle in this manner because Fogle is not concerned with mobile devices or other computing devices that may move between secure locations and insecure locations where data security may be a problem. To modify Fogle in this manner would also create difficulties in implementing differing countdown timer lengths while still providing a dual timer solution. While Tuulos describes different levels of security based on location, there is no teaching or suggestion to combine this general feature with a countdown timer, nor the specific modification of shortening the countdown timer value based on whether the device is an insecure location or secure location as in the claimed invention. Tuulos only describes different password or PIN lengths, and the frequency of entering passwords or PINS which, as noted above, may be triggered by many different trigger conditions.

In view of the above, it can be seen that Fogle and Tuulos fail to describe each and every feature of claimed invention. Moreover, there is no basis in either Fogle or Tuulos for modifying the teachings of these references to arrive at the claimed feature of using a countdown timer on a mobile device which has a shorter value in less secure areas then when in more secure areas, and the Examiner has not provided any reason why the skilled person would arrive at this modification, particularly in view of the difficulties set forth above.

In sum, independent claims 26 and 31 are directed to method and mobile device which use a countdown timer which having a shorter value when the device is determined to be in a less secure location. Contrary to the Examiner's reading of Tuulos, this feature is not disclosed in Tuulos (inherently or otherwise), and there is no reason why the skilled person would arrive at this feature in view of Tuulos and Fogle. Independent claims 15 and 32, in addition to the countdown timer, also require different passwords to unlock the device depending on whether the mobile device is determined to be in a secure or insecure location.

In view of the above, it is respectfully submitted that independent claims 15, 26, 31 and 32 are patentable. The dependent claims are considered to be patentable for at least the same reasons given for their respective base independent claims.

In view of the foregoing remarks and submissions, the Applicant respectfully requests reconsideration and submits that the present application is in condition for allowance.

Should the Examiner have any questions in connection with the Applicant's submissions, please contact the undersigned.

Respectfully Submitted,

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